



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 9, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0042

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 – Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation	Not Sustained (Training Referral)
# 2	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)
# 3	8.300 – Use of Force Tools 6(1). Only Officers Trained and Certified in the Use of PIT and Stop Sticks are Permitted to Use Them	Sustained
Imposed Discipline		
Suspension without pay: 1 day		

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee conducted a vehicle pursuit of a fleeing suspect despite the risk of pursuit driving to the public outweighing the risk posed by the subject. It was further alleged that the Named Employee failed to activate his sirens as required by policy and used an untrained and improper vehicle force tactic to end the pursuit.

### **ANALYSIS AND CONCLUSIONS:**

On December 28, 2019, at approximately 1730 hours, SPD received reports of a man sleeping inside his car with the engine running. At 1739 hours, Named Employee #1 (NE#1) and his partner arrived at the scene. They positioned their patrol vehicle alongside the subject car. NE#1 stood on the driver's side while his partner approached from the passenger side. The officers observed an open pill bottle in the passenger seat. NE#1 performed a check on the vehicle's temporary license plate and noted that it did not appear to match the vehicle.

NE#1's partner attempted to open the passenger side door to turn off the car. As he did so, the subject awoke and the officer noted that he had bloodshot eyes, leading him to suspect that the subject was intoxicated. The officer advised the subject that he was audio and video recording and ordered the subject to turn off and exit the car. The subject initially complied but then got back in the car and began backing it out to escape, ramming the vehicles



parked behind and in front of him. As a result of the subject's attempt to escape, NE#1's partner rapidly shut the passenger door to avoid being struck by the subject's car. NE#1 later reported that he perceived that his partner had been hit.

NE#1 ran to his patrol vehicle and entered it. The subject drove out of the parking space and into the roadway, striking NE#1's patrol vehicle as he did so. NE#1 activated his emergency lights and began to pursue, although he did not activate his sirens. In-Car Video (ICV) recorded the pursuit. The subject drove on 143rd Street toward Aurora Avenue, and NE#1 continued pursuing him. The subject turned left into traffic on Aurora, and, in doing so, struck another vehicle. The impact damaged the subject's car, causing it to smoke and its airbags to deploy. NE#1 pursued, narrowly missing an oncoming vehicle, while the subject wove between other vehicles that were stopped at a light. The subject turned right onto 145th Street without stopping at a stop sign, and NE#1 followed. NE#1 used his patrol vehicle to ram the subject's car on the unoccupied passenger side, causing the subject to swerve but failing to stop him.

The subject continued on 145th, rear-ending a second vehicle while his car continued to smoke. The subject's car, now evidently damaged, appeared to swerve into oncoming traffic on 145th before turning onto a neighboring street and coming to rest against the curb. The subject started to exit his vehicle. At roughly the same time, NE#1's patrol vehicle hit the subject's car as NE#1 attempted to stop. The impact pushed the subject's car into the street as the subject exited and began to flee on foot. NE#1 stopped his patrol vehicle and pursued. Ultimately, backing units arrived and apprehended the subject in a neighboring yard.

The Force Review Board (FRB) conducted a review of the incident. In its review, FRB noted a number of policy violations that were addressed with NE#1 through the chain of command. Primarily, these concerns related to NE#1's decision to initiate the pursuit and to continue it even as the risk posed by the pursuit grew until it potentially outweighed the need to take the fleeing subject into custody. In particular, the FRB's assessment noted that NE#1 had not been trained on using his patrol vehicle as a ram to end pursuits. While FRB noted these deficiencies, it deferred to OPA on the question of whether NE#1's use of force was consistent with policy.

OPA examined NE#1's Type I Use of Force and Vehicle Pursuit reports. NE#1 noted that he pursued the subject because he "presented a significant risk to the public." NE#1 wrote that the subject's initial collision with a civilian vehicle caused the subject to slow down significantly, and that he decided then to take advantage of the subject's slow speed to end the pursuit before it escalated by ramming the subject's car at low speed to cause it to spin out. This tactic, which OPA notes is similar to the objective of a properly applied PIT maneuver, was unsuccessful. In the Vehicle Pursuit report, NE#1 justified his decision to pursue based on his observation that the subject had committed multiple felonies, namely a hit-and-run (while attempting to escape) and a perceived vehicular assault on NE#1's partner. NE#1 cited the subject's appearance, erratic behavior, and presence of open pills as reason to believe the subject was intoxicated, a suspicion bolstered by the subject's aggressive and erratic driving. NE#1 cited the subject's dangerous driving despite heavy traffic, as well as several near collisions on Aurora, as exigent circumstances constituting an immediate public threat. NE#1 cited this immediate threat as evidence that the need to apprehend the subject outweighed the threat to public safety posed by the pursuit itself.

OPA interviewed NE#1. In his interview, NE#1 stated that he initiated the pursuit for the reasons outlined in his reports. It was the first vehicle pursuit he has been involved in. He admitted failing to activate his emergency siren and said that he did not realize when he activated his emergency lights that his siren did not also activate. NE#1 theorized that he experienced auditory exclusion due to the high stress he was under.



NE#1 explained that, at the time he pursued the subject, he believed that the subject had just struck his partner with his car. He took this as evidence that the subject was acting without regard for the safety of others. He believed the subject to be intoxicated, a belief strengthened due to the subject's erratic driving. NE#1 said that he has responded to multiple DUI collisions and has seen the dangers such conduct poses to the community. NE#1 described the conditions for the vehicle chase as wet and rainy, dark, and in light to medium traffic for the area, which encompassed several major arterials.

NE#1 stated that he used the tactic of "ramming" the subject's car once when the subject turned from Aurora Avenue to 145th Street. He did not intentionally ram the subject's car a second time when the subject turned from 145th onto Meridian. He stated both in reports and in the interview that the rainy and wet conditions caused his car to slide when he attempted to brake. OPA notes that screeching of tires consistent with a sudden attempted stop is audible for that portion of the ICV recording.

Regarding NE#1's decision to ram the subject as he turned from Aurora to 145<sup>th</sup> Street, he cited his belief that continuing a vehicle pursuit is inherently risky. He decided to attempt to end the pursuit given the low speeds he and the subject were traveling, relative to other portions of the chase. By ramming the subject, NE#1 intended to cause the subject's car to turn, pointing it toward the side of the road. NE#1 said that he had been trained in this technique at the police academy in North Carolina, although not by SPD. He stated that he believed using force was reasonable, necessary, and proportional in this instance because he had no alternative method to stop the chase and prevent its attendant public safety risks.

#### **Named Employee #1 - Allegation #1**

##### ***13.031 – Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation***

SPD policy 13.031(3) requires that officers involved in a pursuit "shall drive with due regard for the safety of all persons and will use both emergency lights and continuous siren."

OPA finds that NE#1 violated policy when he failed to turn his siren on during the pursuit. As indicated above, NE#1 stated that this was not willful and that he failed to do so because of the significant stress he was under at the time. He told OPA that this was the first vehicle pursuit he had engaged in and that he was operating under the assumption that he had just seen his partner suffer a vehicular assault.

There is no evidence in the record contradicting NE#1's explanations and OPA finds them to be credible. OPA further finds it significant that this was NE#1's first vehicle pursuit and that he was a newer officer at the time. Accordingly, instead of recommending a Sustained finding, OPA instead concludes that NE#1 should receive the below Training Referral. Future non-compliance with this policy will likely result in a Sustained finding and the imposition of discipline.

- **Training Referral:** NE#1 should be assigned training in the proper conduct of vehicle pursuits, including but not limited to the requirement that he activate his vehicle's sirens. Ideally, this training would also include other aspects of SPD's pursuit policy, as well as strategies to maintain focus and composure in emergency situations. To the extent the chain of command feels that it has already sufficiently covered this in the retraining previously provided, no further action needs to be taken. Any retraining or counseling that is conducted should be documented, and that documentation retained in an appropriate database.



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Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #2**

***13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver***

SPD Policy 13.031-POL-5 states that officers will cease a pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver.

OPA agrees with both the chain of command and the FRB that the pursuit was justified at its inception given NE#1's real-time interpretation of the facts available to him at the time. However, OPA is also in agreement with the chain of command and the FRB that, as the pursuit proceeded, the risk of continuing the pursuit outweighed the need to stop the subject and take him into custody.

In reaching this finding, OPA recognizes how fast this incident, and indeed all pursuits, occur and the quick decision-making that is required of officers. OPA also recognizes that officers, including NE#1 here, may make mistakes and fail to recognize the increasing danger of a pursuit while in the midst of such driving. This being said, SPD policies concerning pursuits are restrictive and this is for good reason. Pursuits can be dangerous, can and do result in serious injuries to if not the death of those involved and innocent bystanders, and can incur tremendous liability for the City. Here, the pursuit was dangerous at the outset and grew more so based on the conduct of the subject. At the time of the pursuit, it was raining and the roads were wet, there were other cars on the road, NE#1 and the subject both drove at high speeds and through intersections without stopping, and the subject struck and nearly struck a number of other motorists. While OPA recognizes that the subject had committed multiple felony crimes and that there was a law enforcement interest in taking him into custody, OPA concludes that the risk of harm outweighed the need to stop the subject. This was particularly the case at the backend of the pursuit. Given this, NE#1 had an obligation to recognize this danger and to terminate the pursuit. His failure to do so violated policy.

Similar to the analysis of Allegation #1, OPA acknowledges that this was NE#1's first pursuit and that he was a relatively new officer at the time. As such, he has never violated this policy before. OPA further notes that NE#1 received significant counseling and retraining from his chain of command immediately after this incident and that he has not been an involved employee in any other disciplinary matters concerning pursuits or any other aspects of the pursuit policy since that time. Given this, OPA believes that the below Training Referral rather than discipline is the appropriate result.

- **Training Referral:** NE#1 should be assigned training in the proper conduct of vehicle pursuits, including but not limited to the requirement that he terminate pursuits where the risk of harm outweighs the need to stop the subject. To the extent the chain of command feels that it has already sufficiently covered this in the retraining previously provided, no further action needs to be taken. Any retraining or counseling that is conducted should be documented, and that documentation retained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



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**Named Employee #1 - Allegation #3**

***8.300 – Use of Force Tools 6(1). Only Officers Trained and Certified in the Use of PIT and Stop Sticks are Permitted to Use Them***

SPD Policy 8.300-POL-6(1) states that only officers trained and certified in the use of Pursuit Intervention Technique (PIT) maneuvers and the deployment of stop sticks are permitted to use these techniques. SPD Policy 8.300-POL-6(1). The policy also states that vehicle ramming is an untrained tactic permitted only in exigent circumstances. (*Id.*) Both PIT maneuvers and vehicle ramming tactics are defined in SPD Policy 8.050 and are always defined as uses of force. (*See* SPD Policy 8.050.) SPD policies permit only trained officers to use PIT maneuvers, and otherwise SPD does not train its officers to use patrol vehicles as impact weapons.

As with pursuits in general, pursuit ending tactics carry with them the risk of significant potential harm. OPA's research indicated that, since 2016, the use of such maneuvers has led to approximately 30 deaths nationwide and numerous other cases of significant and/or disabling injury. OPA raises this not because it believes that these maneuvers should be banned, but to explain why SPD policy is so restrictive concerning their use.

Here, OPA concludes that, whether NE#1 used a PIT maneuver or vehicle ramming, his conduct was contrary to policy. With regard to the use of a PIT maneuver, as discussed above, NE#1 was required to obtain training from SPD on this tactic. While NE#1 stated that he received training at his previous department in North Carolina regarding PIT maneuvers, training from another agency does not satisfy SPD's policy requirement. Given that NE#1 did not have such training from SPD, his decision to use this force violated policy.

Moreover, even if NE#1's force was considered a vehicle ramming instead of a PIT maneuver, OPA would still conclude that it violated policy. Specifically, OPA does not believe that there were sufficient exigent circumstances warranting vehicle ramming for two main reasons. First, while there was probable cause and a need to take the subject, the crimes at issue did not present, in and of themselves, exigent circumstances to ram. Second, the need to stop the pursuit was not so immediate that it justified the use of a potentially risk tactic such as ramming. Similar to OPA's analysis in the context of the continuation of pursuit driving, the situation had become increasingly dangerous and the correct decision would have been to terminate the pursuit, not to use an untrained tactic to try to end it.

While, as indicated above, NE#1's relative lack of experience as an SPD officer certainly is relevant as to his culpability, OPA believes that a Sustained finding is warranted here. NE#1 must be aware that the use of pursuit ending force tactics are discouraged except in extreme circumstances and with the appropriate training. Neither was present here. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**